sion is that it shows that the right to occupy the premises conferred on the defendant was intended as an exclusive right.

It is also perhaps of some significance that the parties are not related but were entering into a business relationship unlike the parties in *Errington* v. *Errington.*

Further the issue of rent receipts marked "Shop Rent Receipts" rather than an ordinary receipt for the payment of money seems to me to support an intention to create a tenancy.

There are therefore a number of circumstances in the present case which in their totality have led me to the conclusion that this agreement should be construed as creating a tenancy and not a licence.

There is, however, one further matter to which I would refer before leaving this case. The question of estoppel was raised by the defendant as a ground for saying that the agreement was a tenancy.

In view of the conclusion at which I have arrived in regard to the relationship of the parties I do not think it is necessary for me to decide the question, indeed my decision is not dependent upon that point.

I therefore hold on the issues stated that the relationship between the parties is not that of licensor and licensee but that of landlord and tenant and I therefore find as a fact that Ling Ping Kwong is a tenant.

There will therefore be judgment for the defendant with costs.

The defendant is hereby ordered to pay to the plaintiff all rents from January 1968 up to date of judgment.

Judgment for the defendant.

TAN TING KOK v. CHEONG LEP KEEN & ANOR.

[F.C.(Azmi L.P., Suffian F.J. and Yong J.) January 11, 1969]

[K.L. — Federal Court Civil Appeal No. X.58 of 1968]

Practice and Procedure — Appeal — Notice of — Service on respondents or their solicitors — Federal Court (Civil Appeals) (Transitional) Rules, 1963, rr. 6 & 7.

The appellant had given notice of appeal but failed to serve the notice on the respondents as required by rule 7 of the Federal Court (Civil Appeals) (Transitional) Rules. An application for leave to serve the notice of appeal out of time was rejected. It was argued that notwithstanding the failure to give notice to the respondents the appeal was properly before the court and could be proceeded with.

Held: rules 6 and 7 of the Federal Court (Civil Appeals) (Transitional) Rules, 1963 must be read together and when a notice of appeal is filed with the court, a copy must at the same time be served on the respondents or their solicitors and if this is not done the appeal has not been properly brought before the court and cannot be proceeded with.

Case referred to:—

(1) *Gurbachan Singh* v. *Seagrott & Campbell* [1962] M.L.J. 370.

Ratnam v. *Cumarasamy & Anor.* [1965] 1 M.L.J. 228, P.C. was also cited in argument.

FEDERAL COURT.

Dato' S.P. Seenivasagam for the appellant.

N.A. Marjoribanks for the respondents.

Cur. Adv. Vult.

Suffian F.J. (delivering the judgment of the court): In this case judgment was given against the defendant on 31st July, 1968. He was dissatisfied and gave notice of appeal on 21st August, but failed to serve the notice on the plaintiffs as required by rule 7 of the Federal Court (Civil Appeals) (Transitional) Rules, 1963. That rule requires the notice of appeal to be served on the plaintiffs or their solicitors *at the time of filing the notice of appeal.* Dato' Seenivasagam for the defendant applied for leave to serve the notice of appeal on the plaintiffs out of time, but we have rejected that application.

He next submits that, notwithstanding the absence of leave, this appeal is properly before the court and he applies for leave to proceed with the appeal. He says that under the rules there are two distinct steps governing civil appeals:

(a) first, the defendant should *give* notice of appeal under rule 6; and

(b) the defendant should *serve* notice of appeal on the plaintiffs under rule 7.

Dato' Seenivasagam argues that step (a) is quite distinct from and independent of step (b), that rule 7 need not be strictly adhered to, that non-compliance with it is not fatal, and that once notice of appeal has been given by the defendant's filing it in court, the appeal is properly before the court and the court can therefore proceed to hear it. He submits that the decision of the Court of Appeal in *Gurbachan Singh* v. *Seagrott & Campbell* (1) was in error. We regret that we are unable to agree with him. We cannot find any reason to differ from the reasoning in *Gurbachan Singh's* case. In our judgment, rules 6 and 7 must be read together and when notice of appeal is filed with the court, a copy must *at the same time* be served on the respondents or their solicitors. There is no difficulty about doing this if the respondents or their solicitors are in the same town. Equally there is no difficulty if they are in a distant State, because rule 32(1)(b) allows service by posting the document by prepaid registered post

properly addressed. Dato' Seenivasagam concedes that this has not been done.

We therefore uphold Mr. Marjoribanks' preliminary objection that this appeal has not been properly brought before the court and disallow Dato' Seenivasagam's application to proceed with this appeal. The appeal is accordingly struck off, the respondents' taxed costs to be paid by the appellant.

Appeal struck off.

Solicitors: *S. Seenivasagam & Sons; Lovelace & Hastings.*

ATTORNEY-GENERAL, SINGAPORE v. LING HOW DOONG

[F.C. (Wee Chong Jin C.J., Tan Ah Tah F.J. and Chua J.) January 23, 1969]

[Singapore — Federal Court Civil Appeal No. Y.42 of 1968]

Constitutional Law — Police Force — Disciplinary action — Public Service Commission — Enhancing of sentence on appeal — Police Force Ordinance, 1958, s. 28(2) — Constitution of Malaysia, art., 135(2) and Independence of Singapore Act, 1965.

This was an appeal against the judgment of Winslow J. who made a declaration that the order of dismissal of the respondent by the Public Service Commission was null and void ([1968] 2 M.L.J. 253). The respondent had originally been charged with four charges of breaches of discipline under the Police Force Ordinance and after an inquiry by a disciplinary board he was found guilty on two of the four charges and the Commissioner of Police imposed a fine of $50 on the first charge and reprimanded him on the second charge. The respondent thereupon appealed against the decision of the commissioner and subsequently he was informed that the Public Service Commission had decided after hearing the appeal that he should be dismissed from the service. The respondent commenced an action claiming a declaration and damages. As a result Winslow J. made the declaration above mentioned. The questions which were raised on the appeal were: (1) whether the Public Service Commission, in ordering the dismissal of the respondent, was acting in exercise of its original jurisdiction conferred on it by the Constitution of Malaysia or in exercise of its appellate jurisdiction conferred on it by section 28(2) of the Police Force Ordinance; (2) if the Public Service Commission was acting in exercise of its appellate jurisdiction, whether it had power, in an appeal by the respondent, against his conviction and sentence to enhance the punishment awarded by the Commissioner of Police; (3) if the Public Service Commission was acting in the exercise of its original jurisdiction, whether the respondent had been dismissed without being given a reasonable opportunity of being heard.

Held, dismissing the appeal: (1) it was beyond doubt that the Public Service Commission in ordering the dismissal of the respondent in this case was acting in the exercise of its appellate jurisdiction under section 28(2) of the Police Force Ordinance;

(2) the Public Service Commission had no power to enhance the punishment and therefore in dismissing the respondent it was acting without jurisdiction.

Semble: if in this case the Public Service Commission could be said to be exercising its original jurisdiction, then on the facts the respondent had not been given a reasonable opportunity to be heard on the question of his dismissal.

Case referred to:—

(1) *B. Surinder Singh Kanda* v. *The Government of the Federation of Malaya* [1962] M.L.J. 169.

FEDERAL COURT.

Ho Thian Cheh (Ag. Senior State Counsel) for the appellant.

J.B. Jeyaretnam for the respondent.

Cur. Adv. Vult.

Wee Chong Jin C.J. (delivering the judgment of the court): The respondent Ling How Doong was an inspector in the Singapore Police Force. On the 23rd February 1966 a letter of dismissal was addressed to him by the Commissioner of Police in the following terms:—

"23rd February, 1966.

Inspector Ling How Doong,
Police Training School.
Through: A.C. 'Training & Personnel'.

(Sd.)
Assistant Commissioner,
'Training & Personnel'

Commandant, Police Training School.

I have to refer to your letter of 5-11-65 forwarding your grounds of appeal against the finding and punishment imposed by the Commissioner of Police.

2. Your appeal has been submitted for the consideration of the Public Service Commission. The Public Service Commission after consideration of your appeal has decided that you should be dismissed from the service.

3. This letter then is to serve as a notice to you of your dismissal from the service. Your dismissal from the service will take effect from the day immediately following that on which you receive this notice. Your last day of service will therefore be the day you receive this notice.

4. Please acknowledge receipt of this letter on the attached duplicate copy thereof.

(Sd. J. Le Cain)
Commissioner of Police,
Singapore."

The facts and circumstances which resulted in Inspector Ling's dismissal from the Singapore Police Force by the Public Service Commission were as follows:—

On 14th June 1965 four charges under section 27 of the Police Force Ordinance were preferred against Inspector Ling. In accordance with regulation 8 of the Police Regulations, 1959 which were made under the Police Force Ordinance, 1958 (No. 32 of 1958) a board consisting of two officers senior in rank to Inspector Ling was duly appointed to conduct a disciplinary enquiry into these four charges. One charge alleged that Inspector Ling was guilty of the offence of conduct to the prejudice of good order and discipline, another charge alleged that he was guilty of the offence of neglect of orders